

**CITY OF ILWACO
ORDINANCE #770**

AN ORDINANCE OF THE CITY OF ILWACO, WASHINGTON, ESTABLISHING LAND USE AND DEVELOPMENT REGULATIONS AND BUSINESS LICENSING REQUIREMENTS FOR ADULT ENTERTAINMENT AND SEXUALLY-ORIENTED BUSINESS USES IN THE CITY OF ILWACO, ADDING A NEW CHAPTER TO TITLE 15, AND A NEW CHAPTER TO TITLE 5 OF THE ILWACO MUNICIPAL CODE.

Section 1. Purpose and Intent:

The purpose and intent of the city council in enacting this chapter is to maintain and protect the health, safety and welfare of its citizens, and to mitigate the adverse secondary impacts associated with sexually-oriented or adult entertainment businesses, through land use regulation of the location and operations and business licensing of such businesses. The land use regulations and business licensing set forth herein are intended to prevent health and safety problems and dangerous and unlawful conduct in and around such uses and premises.

Section 2. Findings of Fact:

- A. The city has reviewed numerous studies addressing the impacts of adult entertainment and sexually-oriented businesses; and
- B. Many cities, in Washington and in other sections of the United States, have experienced negative secondary impacts from sexually-oriented business land uses; and
- C. Certain conduct occurring on premises offering adult entertainment creates secondary impacts that are detrimental to the public health, safety and general welfare of the citizens of the city, and therefore such conduct must be regulated as provided herein; and
- D. Regulation of the sexually-oriented businesses, including the adult entertainment industry is necessary because in the absence of such regulation significant criminal activity has historically and regularly occurred. This history of criminal activity has included prostitution, illegal employment of minors, narcotics trafficking and use, alcoholic beverage law violations, assault, theft, breaches of the peace, tax evasion, and the presence within the industry of individuals with outstanding arrest warrants and past criminal behavior that may be indicative of intended future conduct; and
- E. Sexually-oriented businesses are increasingly associated with ongoing prostitution, illegal drug transactions, disruptive conduct and other criminal activity. Such activities constitute a threat to the public peace, health and safety. The hours of operation of such businesses have a significant impact on the occurrence of criminal activity; and
- F. Due to the information presented regarding the connection of prostitution with adult entertainment and other sexually-oriented business, there is concern over sexually

transmitted diseases, which is a legitimate health concern of the city and thus requires regulation of adult entertainment and other sexually-oriented businesses in order to protect the health, safety and well being of the public; and

- G. No evidence has been presented to show that the location of sexually-oriented business land uses within the city will improve the commercial viability of the community, or will otherwise have a beneficial effect, and not have a detrimental effect; and
- H. The city may rely on the experiences and studies of other cities and organizations in assessing the need for regulation of sexually-oriented business land use operations and licensing or of regulation; and
- I. Regulation of sexually-oriented business land uses is necessary to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than in response to an existing problem; and
- J. The city comprehensive plan strongly supports that adjacent land uses be compatible; and
- K. Sexually-oriented business land uses are incompatible with certain land uses, such as religious facilities, parks, daycare facilities, libraries, youth centers and schools (including nursery schools and preschools). Such incompatibility has been documented in studies performed throughout the United States; and
- L. Increased levels of criminal activities occur in the vicinity of adult entertainment and other sexually-oriented business land uses, and the patrons of such businesses are frequently found to be the victims of such criminal activities; and
- M. Adjacency of residential and many commercial uses to sexually-oriented business land uses reduces the value of residential and commercial property; and
- N. Sexually-oriented business land uses are perceived to, and usually do, negatively impact the character of established neighborhoods; and
- O. Utilizing one thousand feet (1,000') as the requisite spacing between sexually-oriented business land uses and places of worship, libraries, daycare facilities, youth centers and schools (preschool or nursery schools through twelfth grade) and five hundred feet (500') as the requisite spacing between sexually-oriented business land uses and public parks, museums and taverns, in existence or proposed and vested by the effective date hereof, will provide adequate separation and buffering while providing a reasonable amount of land within the city to be available for sexually-oriented business land uses; and
- P. It is necessary to license entertainers in the adult entertainment industry to prevent the exploitation of minors; to ensure that each such entertainer is an adult; and to ensure that such entertainers have not assumed a false name, which would make regulation of the entertainer difficult or impossible; and

- Q. It is necessary to have a licensed manager on the premises of sexually-oriented businesses so that there will at all necessary times be an individual responsible for the overall operation of the establishment, including the actions of patrons, entertainers and other employees; and
- R. The license fees required herein are nominal fees imposed as necessary cost measures designed to help defray the substantial expenses incurred by the city in regulating sexually-oriented businesses.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ILWACO, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 3. Applicability:

This ordinance shall constitute the exclusive means of regulating and licensing adult entertainment and sexually-oriented businesses. In the event of a conflict between the provisions of other regulations of the city and this ordinance, the provisions of this ordinance shall control.

Section 4. Definitions:

For the purposes of this chapter and unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

ADULT ARCADE STATION OR BOOTH: Any enclosure where a patron, member or customer would ordinarily be positioned while using an adult arcade device or viewing a live show. An "adult arcade station or booth" shall also refer to the area in which an adult arcade device is located and from which the adult arcade picture, view, live show or graphic display is to be viewed. The words "adult arcade station or booth" do not mean such enclosures that are private offices used by owners, managers or persons employed on the premises for attending the tasks of their employment, which enclosures are not held open to the patron, members or the public for use, for hire or for a fee for the purpose of viewing the entertainment provided by the arcade device or live show, and are not open to any persons other than employees. For the purposes of this definition, the words, "open to an adjacent public room so that the area inside is visible to persons in the adjacent public room" mean that there may be no door, curtain, partition or other device extending from the floor to the top of the door frame, or any portion thereof, with the exception of a door which is completely transparent and constructed of safety glass as specified in the international building code so that the activity and occupant inside the enclosure may be clearly and easily viewed or seen by persons outside the enclosure from any point in the adjacent public room.

ADULT ENTERTAINMENT: Any exhibition, performance, dance of any type, or other performance, not exempt from this chapter, where such entertainment involves a person appearing or performing (either live or recreated) who:

- A. Is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola, or (without regard to gender) any portion of the pubic region, anus, buttocks or genitals; or
- B. Touches, caresses or fondles the breasts, buttocks, anus, genitals or pubic region of themselves or a patron, or permits the touching, caressing or fondling of their own breasts, buttocks, anus, genitals or pubic region by a patron, another employee or anyone else with the intent to sexually arouse or excite.

ADULT-ORIENTED BUSINESS: Any of the following:

Adult Arcade: An establishment and individual viewing areas or booths where, for any form of consideration, including a membership fee, one or more still or motion picture projectors, slide projectors, digital video disc players, or similar machines, or other image producing machines are used to show films, motion pictures, video cassettes, digital images, slides, or other photographic reproduction of sexual conduct, specified anatomical areas, or specific sexual activities.

Adult Cabaret: A nightclub, bar, restaurant, theater, auditorium, or similar commercial establishment, whether or not alcoholic beverages are served, which presents adult entertainment.

Adult Motel: A hotel, motel, or similar establishment which:

- A. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- B. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

Adult Motion Picture Theater: A commercial establishment or drive-in theater where at least twenty five percent (25%) of the films, motion pictures, video cassettes, digital video discs, slides, or other photographic reproductions which are characterized by the depiction of or description of sexual conduct, specified anatomical areas, or specific sexual activities and are not rated G, PG, PG-13, NC-13, NC-17, or R by the Motion Picture Association of America, and are shown for any form of consideration.

Adult Retail Establishment: A business having at least twenty five percent (25%) of its volume of trade devoted to the display, barter, rental, and/or sale of books, printed matter, video tapes, video discs, computer software, audio or video cassettes, films, pictures, or other merchandise, material or paraphernalia distinguished or characterized by an emphasis on matters depicting, describing, or relating to sexual conduct, specified anatomical areas, or specific sexual activities or adult entertainment. For the purpose of this chapter, "percent of its volume or trade" means that portion of the store's display space devoted to such material, or that portion of its gross receipts received from the sale of such material, whichever is greater.

Other Adult Entertainment Facility: Other adult entertainment facilities include, but are not limited to:

- A. Any commercial establishment to which a patron is invited or admitted and where adult entertainment is presented as a part of the premises activity, including, but not limited to, escort agencies, seminude or nude modeling or photography studios, lingerie modeling studios, and body painting studios; or
- B. Any premises where specified sexual activities are performed or recorded on film, tape, or other media for commercial purposes.

BODY PAINTING STUDIO: A commercial establishment where patrons are invited to apply paint or to view the application of paint to a nude human body.

ADMINISTRATOR: The administrator of this ordinance shall be the City Clerk of the city of Ilwaco or his/her designee.

EMPLOYEE: Any and all persons, including managers, entertainers and independent contractors providing adult entertainment, who work in or at or render any services directly related to the operation of an adult entertainment premises.

ENTERTAINER: Any person who provides adult entertainment for an "adult entertainment" premises as defined in this section, whether or not a fee is charged or accepted for entertainment.

ENTERTAINMENT: Any exhibition or dance of any type, pantomime, modeling or any other performance.

MANAGER: Any person who manages, directs, administers or is in charge of the affairs and/or conduct of any sexually-oriented business. The term "manager" also includes any assistant working with or under the direction of a manager to carry out such purposes.

MASSAGE AND MASSAGE THERAPY: A health care service involving the external manipulation or pressure of soft tissue for therapeutic purposes. "Massage therapy" includes techniques such as tapping, compressions, friction, Swedish gymnastics or movements, gliding, kneading, shaking, and fascial or connective tissue stretching, with or without the aid of superficial heat, cold, water, lubricants, or salts. "Massage therapy" does not include diagnosis or attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force, nor does it include genital manipulation.

MASSAGE BUSINESS: The operation of a business where massages are given.

NUDITY: Unclothed, or the showing of the human genitals, pubic region, buttocks, vulva or anus with less than a fully opaque covering, the showing of any part of the female breast below the top of the areola with less than a fully opaque covering, or the showing of covered male genitals in a discernible turgid state.

OBSCENE: Any matter:

- A. That the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; or

- B. That explicitly depicts or describes patently offensive representations or descriptions of:
 - 1. Sexual acts, normal or perverted, actual or simulated; or
 - 2. Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital areas; or
 - 3. Violent or destructive sexual acts, including, but not limited to, human and/or animal mutilation, dismemberment, rape and/or torture; or
 - 4. A dominant theme that appeals to the prurient interests of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sadomasochistic abuse; and
- C. That, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political or scientific value.

OPERATOR: Any person operating, conducting or maintaining any sexually-oriented business.

OWNER: Any person who owns or has an ownership interest in any sexually-oriented business.

PANORAM OR PEEP SHOW: Any device which, for payment of a fee, membership fee or other charge, is used to exhibit or display a picture, view, film, videotape, videodisc or similar reproduction means, a live show or other graphic display of "specified anatomical areas" or "specific sexual activities."

PERSON: Any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons, however organized.

PUBLIC PLACE: Any area generally visible to public view and includes, but is not limited to, streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots and automobiles, whether moving or not.

SEXUALLY-ORIENTED BUSINESS: Any adult-oriented business or adult entertainment business, adult or adult retail establishment, adult theater or adult arcade.

SPECIFIED ANATOMICAL AREAS:

- A. Less than completely and opaquely covered:
 - 1. Human genitals, pubic region;
 - 2. Human anus; or
 - 3. Female breast exposing any part below the top of the areola; or
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES:

- A. Human genitals in a state of sexual stimulation or arousal;
- B. Acts of human masturbation, sexual intercourse, sodomy or bestiality; or
- C. Fondling or other erotic touching of human genitals, pubic region, human anus or female breast.

STOCK IN TRADE:

- A. The wholesale dollar value of all merchandise, goods or services, readily available for purchase, rental, viewing or use by patrons of the establishment, excluding merchandise located in any storeroom, under the counter, or in any other portion of the premises not open to patrons; or
- B. The total volume of shelf space and display area in those portions of the establishment open to patrons.

THEATER: A place of public assembly intended and expressly designed for the presentation of motion pictures, other than an adult theater.

Section 5. Sexually-oriented and Adult Entertainment Business Uses Permitted:

- A. **Location:** Sexually-oriented and adult entertainment businesses shall be permitted only in the M-1, Light Industrial District ; provided, however, that no sexually-oriented business may be permitted within one thousand feet (1,000') of any place of worship, child daycare facility, community youth center or library, or of any school, public or private, preschool through twelfth grade, or within five hundred feet (500') of a public park, museum or tavern existing as of the effective date hereof. Existing places of worship, child daycare facilities, community youth centers and libraries, public and private schools, public parks, and the buffers associated with those areas as of the effective date hereof are illustrated in "Figure 1, Sexually-oriented Business Buffer Areas", on file in the office of the city treasurer. B. **Basis For Determining Distance:** The distances described in subsection A of this section shall be a straight, horizontal line, measured from the nearest point of the parcel proposed to be used for a sexually-oriented business to the nearest point of the parcel from which the proposed land use is to be separated.
- B. **Uses Not Compatible with Sexually-oriented Businesses:** New schools, libraries, child daycare facilities, or churches located within one thousand feet (1,000') of that area of the M-1 Light Industrial Zone designated for the location of sexually-oriented or adult businesses, and public parks, museums and taverns located within five hundred feet (500') of that area of the M-1 Light Industrial Zone designated for the location of sexually-oriented or adult businesses, whether allowed by right or requiring a conditional use permit, shall also be required to obtain a special use permit from the administrator. Such special use permit shall require the applicant to waive, in writing, any protest to the current or future location of a sexually-oriented or adult business that may be approved in accordance with the provisions set forth below.

Section 6. Prohibited Activities:

- A. **Alcoholic Beverages:** No sexually-oriented business shall be permitted to operate in a building where alcoholic beverages are served for consumption on the premises.
- B. **Display of Merchandise Visible Outside Premises:** No sexually-oriented business shall permit any display of merchandise or services to be visible from outside the premises in which the business is located.

Section 7. Licenses Required:

A. Sexually-Oriented Businesses:

1. It is unlawful for any person to operate or maintain a sexually-oriented or adult entertainment business in the city unless the owner, operator or lessee thereof has obtained from the administrator a license to do so, to be designated a "sexually-oriented business license."
2. It is unlawful for any entertainer, employee or manager to knowingly work in or about, or to knowingly perform any service or entertainment directly related to the operation of, an unlicensed sexually-oriented or adult entertainment business.

B. Adult Arcade Premises and Devices:

1. It is unlawful to display, exhibit, expose or maintain upon any premises to which members of the public are admitted any adult arcade device without a valid and current license for both the device and the premises, to be designated an "adult arcade device license", and a "sexually-oriented business license" respectively.
2. It is unlawful to own and exhibit or display for public use, or to place with another, by lease or otherwise, for public use, exhibit or display, any adult arcade device without a valid and current license per Ilwaco Municipal Code 5.08 to be designated an "adult arcade device license".

C. Adult Entertainment Premises or Adult Arcade Premises Managers and Entertainers:

It is unlawful for any person to work as an entertainer or manager at an adult entertainment premises or adult arcade without having first obtained from the administrator a license to do so, to be designated as an "adult entertainer's license," an "adult entertainment manager's license" or an "adult arcade manager's license."

Section 8: License Application Requirements:

A. Sexually-oriented Business License: All applications for a sexually-oriented business license shall be submitted in the name of the person proposing to conduct the operations of the business and shall be signed by such person and notarized or certified as true and correct under penalty of perjury. All applications shall be submitted on a form supplied by the city, and shall require the following information:

1. The name, residence address, home telephone number, date of birth, and social security number of the applicant.
2. The business name, address and telephone number of the establishment.
3. The names, residence addresses, residence telephone numbers, social security numbers and dates of birth of any partners, corporate officers or directors, of any entity holding ownership, or leasehold interest in the adult business premises, and/or any adult arcade devices on the premises.
4. Such additional information as the administrator may require concerning the identity of corporate shareholders identified in subsection A3 of this section.

5. A description of the adult entertainment, arcade or similar business history of the applicant, whether such person or entity, in previously operating in this or another city, county or state, has had a business license revoked or suspended, the reason therefore, and the activity or occupation subjected to such action, suspension or revocation.
 6. The name, address, telephone number, date of birth and social security number of the manager or other persons responsible for the operation of the premises and/or arcade devices.
 7. Whether the applicant or manager has been the subject of a bail forfeiture, adverse finding or conviction in connection with local, state or federal criminal law, other than a parking offense or traffic infraction, within the five years immediately preceding the date of the application; and, if so, the nature of the crime and the date, location and nature of the judicial action taken.
 8. The number of and description of each adult arcade device to be located on the premises, including make, model and serial number of all adult arcade devices.
 9. A sketch or drawing drawn to scale, sufficient to show the layout of the premises containing any adult arcade devices, including all information necessary to determine whether the premises comply with the provisions of this chapter, and any state, local or federal regulations.
 10. A non-refundable application fee.
- B. Adult Arcade Device License: Pursuant to Ilwaco Municipal Code 5.08, complete applications for an adult arcade device license shall be submitted in the name of the device's owner, and shall contain all of the information contained in subsection A of this section, including a non-refundable application fee.
- C. Manager's or Entertainer's License: All complete applications for a sexually-oriented business manager's license or entertainer's license shall be signed by the applicant and notarized or certified as true under penalty of perjury. All applications shall be supplied by the city, and shall require the following information:
1. The applicant's name, home address, home telephone number, date and place of birth, social security number, and any stage names or nicknames used in entertaining, or alias.
 2. The name and address of each business at which the applicant intends to work as a manager or entertainer.
 3. The name and address of each employer or individual or business for whom the applicant was an employee or independent contractor for the three-year (3) period immediately prior to the date of the completed application, including the period of employment.
 4. Whether the applicant has been the subject of a bail forfeiture, adverse finding or conviction in connection with local, state or federal criminal law, other than a parking offense or traffic infraction, within the five years immediately preceding the date of the application; and, if so, the nature of the crime and the date, location and nature of the judicial action taken.
 5. Supplemental information and/or identification deemed necessary by the administrator to confirm any statements set forth in the application.

6. A non-refundable application fee.
- D. Additional Requirements: In addition to the above, each of the applicants for licenses described in this section shall provide authorization for the city, its agents and employees, to investigate and confirm any statements set forth in the application.
- E. Failure to Provide Information: Failure to provide information required by this section will constitute an incomplete application and will not be processed. The applicant shall be responsible for verifying any information in the application to the administrator's reasonable satisfaction.
- F. Proof of Age: All applicants for any license required herein, shall be at least eighteen (18) years of age, and shall present appropriate documentation of the same. Any of the following shall be accepted as documentation of age:
 1. A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth.
 2. A state issued identification card bearing the applicant's photograph and date of birth.
 3. An official passport issued by the United States of America.
 4. An immigration card issued by the United States of America.
 5. Any other picture identification issued by a governmental entity.

Section 9: Investigation of Applicant:

- A. Investigation; Fingerprinting:
 1. The original complete application shall be filed with the administrator.
 2. In order to confirm identity, all applicants shall also at that time provide, through the Pacific County Sheriff's office, a complete set of fingerprints. The cost of obtaining such fingerprints shall be the responsibility of the applicant.
 3. The name, location and type of business conducted shall be referred to the city planner, building official, fire chief, and other appropriate staff.
 4. City staff shall review the completed application and inspect the premises proposed to be operated as a sexually-oriented or adult business and shall make written verification to the administrator that such applicant and premises comply with the provisions of the city zoning ordinance and other applicable building and fire safety codes of the city. No license shall be issued without such verification.
- B. Criminal Records Review; Verify Statements In Application: The administrator shall conduct an investigation of all criminal records of the applicant through the Washington State Patrol Washington Access to Criminal History program. Further, the investigation shall consist of investigation of the truth of the statements in the completed application, a review of location and surroundings, and all other matters which might tend to aid in the determination of compliance with the code and whether to grant the license.

- C. Results of Investigation To Administrator: Staff shall inform the administrator as to the results of their investigations with recommendations as to the disposition of said application.
- D. Regular Inspections: The devices licensed under this chapter and those areas upon the premises that are accessible to the public shall be held open for routine regulatory inspections by the city during normal business hours.

Section 10. Issuance of Licenses:

- A. Conditions for Issuance: After review and approval of the completed application by all of the appropriate city departments and staff, the administrator shall issue the applicable license or licenses authorized by this chapter if the administrator finds:

That the business for which a license is required herein will be conducted in a building, structure and location that complies with the requirements and meets the standards of the applicable health, zoning, building, fire and safety laws of the state, and the ordinances of the city, as well as the requirements of this ordinance and any other applicable codes.

- 1. That the applicant has not made any false, misleading or fraudulent statement of material fact in the application for a license, or in any report or record required to be filed with the city.
 - 2. That the applicant, and all employees, agents, partners, directors, officers or managers of the applicant have satisfactorily met all of the requirements in this chapter to obtain such a license.
- B. Payment of Fees: If the requirements of this chapter are met for the particular license, the administrator shall issue such license applied for in accordance with the provisions with this ordinance; provided, however, that the applicable license fee, together with any delinquent fees that may then be due, shall first be paid to the city.
- C. Persons Not Licensable: No license shall be issued pursuant to the provisions of this chapter to:
 - 1. Any applicant who has failed to provide any information required to be supplied according to this chapter, has made any false, misleading or fraudulent statement of material fact in the application, or has failed to meet any of the requirements for issuance of a license under this chapter.
 - 2. Any person who is not eighteen (18) years of age at the time of the application.
 - 3. Any person who has had a similar license revoked within a period of one year prior to the date of making application for a license hereunder.
 - 4. Any person who at the time of application is in default in the payment of any sum due the city for any license, tax, or utility bill as a result of the adult entertainment business.
- D. Rights Of Applicant Limited: The mere filing of an application for a license shall not give the applicant any right to engage in the activity covered thereby.

- E. Time Limit of City to Decide: The decision of the administrator regarding issuance of any license shall be rendered within forty five (45) days of the date of filing of the completed application, unless an extension is requested by the applicant or the city for good cause.

Section 11: License Fees; Term; Renewals; Non-transferable:

- A. Term; Annual Fee: The license year shall be from January 1 to December 31 of each year and shall not be prorated. All licenses shall expire on December 31 of each year. Except as hereinafter provided, all license fees shall be established by resolution of the city council and be payable on an annual basis. The fee for an initial application for any license shall be higher than the annual renewal fee, in order to defray the city's expense in required investigations.
- B. Renewal: Complete applications for renewal of licenses issued under this chapter shall be filed with and paid to the city administrator on or before December 1 preceding the license year. Failure to submit application for renewal by this date will result in expiration of the license and require a new and complete application.
- C. License Nontransferable: No license issued under this chapter shall be transferable.

Section 12: Posting and Display of License:

- A. License Available for Inspection: The manager for any business where adult entertainment takes place shall have a current and valid copy of the license for every adult entertainer employed by the business. The manager shall make these licenses available for inspection by city authorities immediately upon request.
- B. Posting License On Premises: Every person, corporation, partnership or association licensed under this chapter as a sexually-oriented business or sexually-oriented business manager shall post such license in a conspicuous place and manner on the licensed premises.
- C. Separate Licenses: A separate license is required for each adult arcade device and the device license shall be attached to the device in a conspicuous place.

Section 13. Suspension or Revocation; Notice:

After an investigation and upon the recommendations of the police department, city planner, building official, fire chief, the Pacific County health officer or other law enforcement or government agency, the administrator may, upon thirty days notice, suspend or revoke any license issued pursuant to this ordinance where one or more of the following conditions exist:

- A. The license was procured by fraud or misrepresentation or that the applicant, his or her agent, partner, director, officer or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for a license, or in any report or

records required to be filed with the administrator.

- B. The licensee, his/her employee, agent, partner, director, officer or manager have violated any provision of this ordinance or knowingly allowed or permitted in or upon the premises any violations of this ordinance or acts made unlawful under the same.
- C. The building, structure, equipment or location of the business for which the license was issued does not comply with the requirements or fails to meet the standards of this ordinance.
- D. Any reason set forth in section 10 of this ordinance as now or hereafter amended.

Section 14. Appeal and Hearing:

Filing Notice of Appeal: Any person aggrieved by the action of the administrator in issuing, refusing to issue or renew any license under this chapter or in suspending or revoking any license issued under this chapter shall have the right to appeal such action to the Superior Court of Washington, Pacific County, by filing a notice of appeal with the court within ten (10) calendar days after receiving notice of the action from which appeal is taken.

Section 15. Sexually-Oriented Business Premises; Conduct and Operation:

- A. Manager on Duty: A licensed manager shall be on duty at each sexually-oriented business premises at all times during which it is operating, and the same shall not be an entertainer. The name of the manager on duty shall be prominently posted during business hours.
- B. Verify Adult Entertainer License: It shall be the responsibility of the manager to verify that any person who provides adult entertainment within the premises possesses a current and valid adult entertainer's license kept in the manner required by this chapter.
- C. Standards of Conduct: The following standards of conduct shall be adhered to by employees and entertainers of any adult entertainment business:
 - 1. No employee or entertainer shall be unclothed or in less than opaque and complete attire, costume or clothing so as to expose to view any of the "specified anatomical areas" as defined in above, except upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest patron.
 - 2. No employee or entertainer shall perform acts of or acts which simulate:
 - a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any specified sexual activities which are prohibited by law;
 - b. The touching, caressing or fondling of the breasts, buttocks or genitals; or

- c. The displaying of the specified anatomical areas; except as provided for in subsection C1 of this section.
3. No entertainer or employee shall mingle with the patrons and be unclothed or in less than opaque and complete attire, costume or clothing as described in subsection C1 of this section. No entertainer or employee shall fondle or caress a patron or another person while on the premises.
4. No employee or entertainer shall knowingly permit any person upon the premises to touch, caress or fondle the breasts, pubic region, buttocks, anus, vulva or genitals of themselves or of any other person.
5. No employee or entertainer shall wear or use any device or covering exposed to view that simulates the specified anatomical areas.
6. No employee or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this section.
7. The conduct of any employee or entertainer (as described in subsection C2 of this section) of any adult entertainment premises shall not be visible from any public place outside the adult entertainment premises during the hours of its operation. No employee or entertainer of an adult entertainment premises in a state of dress or undress as described in subsection C of this section shall be visible from any public place outside the adult entertainment premises during the hours of operation except for arriving or departing the premises before and after a work shift.
8. No entertainer shall solicit, demand or receive any payment or gratuity from any patron, customer or member of the public other than an admission charge taken at the entrance of the premises.
9. A sign with letters in thirty six (36) point type on a background of contrasting color shall be conspicuously displayed in the common area of the premises, and shall read as follows:

This adult entertainment establishment is regulated by the City of Ilwaco.

Entertainers and employees are not permitted to:

- a. *Engage in any type of sexual conduct, including fondling or caressing;*
- b. *Be unclothed or in such less than opaque and complete attire, costume or clothing so as to expose to view the nipple or areola of the female breast, any portion of the pubic region, genitals or vulva and/or anus except upon a stage at least eighteen inches from the immediate floor level and removed at least six feet from the nearest patron; and*
- c. *Solicit, demand or receive any payment or gratuity from any patron, customer or member of the public.*

10. No manager, employee or entertainer shall perform or allow performance to take place on the premises unless it is in the public area of the premises.

D. Standards of Operation: At any sexually-oriented business, the following standards of operation must be adhered to:

1. Neither the performance nor any photograph, drawing, sketch or other pictorial or graphic representation thereof displaying the female breast below the top of the areola, or any portion of the pubic region, genitals, vulva, buttocks or anus may be visible outside of the adult entertainment business.
2. With the exception of exit illumination, sufficient lighting shall be provided in and about all parts of the premises that are open to and used by the public and shall have an intensity of not less than one foot-candle at floor level.
3. No person may operate or maintain any warning system or device, of any kind, for the purpose of warning, aiding or abetting the warning of patrons, members, customers, employees or any other persons located on the premises that police officers or health, fire, building or other government officials are approaching or have entered the premises.
4. All such adult entertainment businesses are required to have "theater style" seating consisting only of ten (10) or more upright seats in a row with no tables in between each, with each row of seating directly behind or in front of the next row, with no more than forty eight inches (48") between the back of one seat and the back of the seat directly behind and/or in front of it. The front row of seating closest to the performance area shall not violate the six foot (6') setback requirement. This seating shall resemble the standard seating found in a movie theater or symphony hall. There shall be no couches, lounge chairs or other similar type of seating located in any area open to the public; there shall only be theater style seating. Couch dances or the equivalent are prohibited.

Section 16. Adult Arcades; Conduct and Operations:

It is the continuing duty of the owner, manager, operator, agent or employee present in the premises to ensure compliance with this chapter at all times.

- A. Employee on Duty: There must be at least one employee on duty and situated in the public room adjacent to the adult arcade stations or booths at all times that any patron, member or customer is present inside the premises.
- B. Signs Required; Information:
 - 1. There must be permanently posted and maintained in at least two (2) conspicuous locations on the interior of every adult arcade premises a sign stating substantially the following:

Occupancy of any station or booth is at all times limited to one person. There may be no acts of lewd or obscene conduct in the stations or booths or on the premises. Violators are subject to criminal prosecution.
 - 2. Each sign must be conspicuously posted and not screened from the patron's view. The letters must be on a contrasting background and shall be no smaller than thirty six (36) point type in height.
- C. Lighting of Premises: While patrons, members or customers are permitted within the premises, the premises must be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons, members or customers are permitted access so that there is intensity of not less than one foot-candle at floor level.
- D. Doors Unlocked: Doors to areas on the premises which are available for use by persons other than the owner, manager, operator or their agents or employees shall not be locked during business hours.
- E. Unobstructed View Into Booths, Stations: The unobstructed view into the adult arcade booths or stations from the adjacent public room by direct line of sight must remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times.
- F. Prohibited Areas: No patron, member or customer is permitted access to any area of the premises which has been designated as an area in which patrons, members or customers will not be permitted.
- G. Single Person in Booth or Station: No adult arcade booth or station may be occupied by more than one person at any time.
- H. Prohibited Conduct: The conduct between entertainers, employees and patrons prohibited in adult entertainment premises in this ordinance is also prohibited in adult arcade

premises.

- I. **Warning Customers Prohibited:** No person may operate or maintain any warning system or device, of any nature or kind, for the purpose of warning or aiding and abetting the warning of patrons, members, customers or any other persons occupying adult arcade stations or booths located on the premises that police officers or city health, fire licensing or building inspectors are approaching or have entered the premises.

Section 17. Interior Configurations and Operations of Adult Arcade Premises:

The administrator shall not issue an adult arcade premises or device license unless the premises conform to the requirements of this section. In addition, owners of adult arcade premises shall ensure that the premises comply with the criteria set out in this section on a continuing basis.

- A. **Premises:** Restrooms shall not contain video reproduction equipment. There shall be separate restrooms for customers and employees.
- B. **Steps/Risers:** No steps or risers are allowed in any adult arcade booth or station.
- C. **Seating:** No adult arcade station or booth shall have more than one stool type seat. In order to prevent obscuring the occupant of an adult arcade station or booth from view, no stool for seating within an adult arcade station or booth shall have any seat back or sides. The seat cannot be positioned behind the doorway so that the occupant sits with his or her back to the door.
- D. **Ventilation and Other Holes:** All ventilation devices between the adult arcade booths must be covered by a permanently affixed ventilation cover. Ventilation holes may only be located one foot (1') from the top of the booth walls or one foot (1') from the bottom of the booth walls. There shall not be any other holes or openings between the booths.
- E. **Adult Arcade Booth or Station:** All adult arcade stations or booths must be open to an adjacent public room so that the area inside is visible by direct line of sight to persons in the adjacent public room. No adult arcade station, booth or viewing area may be obscured by any curtain, door, wall or other nontransparent enclosure.
- F. **Viewing Areas:** The viewing areas within the adult arcade premises shall be visible from a continuous main aisle and shall not be obscured by any curtain, door, wall or other enclosure. As used in this section, viewing area means the area where a patron or customer would ordinarily be positioned while watching a film, video or other viewing device.
- G. **Doors Unlocked:** The licensee shall not permit any doors to public areas on the premises to be locked during business hours, in violation of the applicable provision of the building code; international fire code, and National Fire Protection Association code.

- H. Illumination of Premises: An adult arcade device manager must, at all times when the premises are open or when any member of the public is permitted to enter and remain there, maintain illumination to such a degree that the intensity is not less than one foot-candle at floor level, and evenly distributed in all parts of the premises available for use by the public.
- I. Single Person in Station or Booth: The licensee or manager shall not permit more than one person to occupy an adult arcade station or booth at one time, and public notices to this effect shall at all times be conspicuously posted and maintained on the adult arcade premises.

Section 18. Hours of Operation:

It is unlawful for any adult entertainment or adult arcade business to be conducted, operated, or otherwise open to the public between the hours of two o'clock (2:00) a.m. and ten o'clock (10:00) a.m.

Section 19. Underage Persons Prohibited:

- A. It is unlawful for any person under eighteen (18) years of age to be in or upon any adult entertainment or adult arcade premises while the same is being operated as a business for which a sexually-oriented business license is required.
- B. It is unlawful for any owner, operator, manager or other person in charge of a premises for which an adult entertainment or adult arcade premises license is required, or employee of same, to knowingly permit or allow any person under the age of eighteen (18) years to be in or upon such premises while it is being operated as an adult entertainment or adult arcade business.

Section 20. Inspections:

- A. Books and Records: Pursuant to this chapter, all books and records required to be kept shall be open to inspection by the administrator or designee during the hours when the licensed premises is open for business. The purpose of such inspection shall be to determine if the books and records meet the requirements of this chapter.
- B. Premises: The licensed premises shall be (as an implied condition of receiving an adult entertainment license) open to inspection by the administrator or designee during the hours when the adult entertainment premises is open for business. The purpose of such inspection shall be to determine if the licensed premises is operated in accordance with the requirements of this chapter. It is hereby expressly declared that unannounced inspections are necessary to ensure compliance with this chapter.

Section 21. Recordkeeping Requirements:

- A. Gross Receipts And Payments To Entertainers: No later than May 1 of each year, each sexually-oriented business licensee shall file with the administrator a verified report showing the licensee's gross receipts and amounts paid to entertainers, if any, for the preceding calendar year.
- B. Record Of Entertainers Employed: Each adult entertainment premises licensee shall maintain, constantly update and retain for a period of at least two (2) years after termination of employment, the names, addresses and ages of all persons employed as entertainers by the licensee.

Section 22. Nuisance Conditions:

- A. Public Nuisance: Any sexually-oriented business operated, conducted or maintained contrary to the provisions of this chapter or any law of the city or state shall be, and the same is declared to be, unlawful and a public nuisance, and the city attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, for the abatement, removal and enjoinder thereof, in the manner provided by law; and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such adult entertainment business, and restrain and enjoin any person from operating, conducting or maintaining an adult entertainment business contrary to the provisions of this chapter.
- B. Moral Nuisance: Any sexually-oriented business operated, conducted or maintained contrary to the provisions of Revised Code Of Washington Chapter 7.48A, "Moral Nuisance", shall be, and the same is declared to be, unlawful and a moral nuisance and the city attorney may, in addition to or in lieu of any other remedies set forth herein, commence an action or actions, for the abatement, removal and enjoinder thereof, or civil penalty, in the manner provided by the moral nuisance statute.

Section 23: Violation; Penalty; Additional Enforcement:

- A. Penalty: Every person, including members of the public, owners, operators, employees or agents, or independent contractors for the owner, employee or operator, or acting as a participant or worker in any way directly or indirectly who works in or operates a sexually-oriented business, of any of the services defined in this chapter without first obtaining a license or permit, and paying a fee to do so, from the city, or violates any provisions of this chapter shall be cited for a misdemeanor by the appropriate legal authority. Upon conviction, such person shall be punished as provided in Chapter 1.20 of the Ilwaco Municipal Code. Each separate day or any portion thereof, during which any violation of any provision of this chapter occurs or continues, shall be deemed a separate and distinct offense.

- B. Additional Enforcement: Notwithstanding the existence or use of any other remedy, the city may seek legal or equitable relief to enjoin any acts or practices that constitute or will constitute a violation of other regulations herein adopted.

Section 24. Exemptions:

This ordinance shall not be construed to prohibit:

- A. Plays, operas, musicals or other dramatic works that are not obscene.
- B. Classes, *including art classes*, seminars and lectures held for serious scientific or educational purposes that are not obscene.
- C. Exhibitions, performances, expressions or dances that are not obscene.
- D. Massage facilities employing licensed massage therapists adjunct to athletic clubs, health clubs, medical facilities, hotels, motels or beauty salons; or massage facilities licensed by the state.

Section 25. Nondiscrimination; Nonliability of the City:

- A. Purpose: It is the purpose of this ordinance to provide for and promote the health, safety and welfare of the general public, to protect property values and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this ordinance.
- B. Duties of City Discretionary: No provision, nor any term used in this ordinance, is intended to impose any duty whatsoever upon the city or any of its officers or employees, for whom the implementation or enforcement of this chapter is discretionary and not mandatory.
- C. Nonliability of City: Nothing contained in this ordinance is intended to be nor shall be construed to create or form the basis for any liability on the part of the city, or its officers, employees or agents, for any injury or damage resulting from the failure of any owner, operator, manager or other person in charge of said premises to comply with the provisions of this ordinance, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement pursuant to this ordinance, or by reason of any action or inaction on the part of the city related in any manner to the enforcement of this ordinance by its officers, employees or agents.

Section 26. Severability:

The provisions of this ordinance are declared to be severable and in the event a court of competent jurisdiction declares any portion of this ordinance invalid, the remaining provisions shall be unaffected thereby.

Section 27. Repealer:

Any previously enacted ordinance, or part thereof in conflict herewith be and the same hereby is repealed to the extent of such conflict.

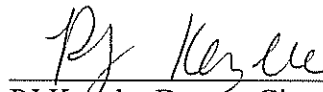
Section 28. Effective Date:

This Ordinance takes effect and is in full force five (5) days after its passage, approval, and publication of an approved summary of the title as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF ILWACO, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 12TH DAY OF JULY, 2010.


Mike Cassinelli, Mayor

ATTEST:


PJ Kezele, Deputy City Clerk

VOTE	Jensen	Chin	Marshall	Greene	Forner	Cassinelli
Ayes	✓	✓	✓	✓	✓	
Nays						
Abstentions						
Absent						

PUBLISHED: July 28, 2010

EFFECTIVE: August 2, 2010

**CITY OF ILWACO
RESOLUTION 2010-07**

A RESOLUTION OF THE CITY OF ILWACO, WASHINGTON, ESTABLISHING A FEE STRUCTURE FOR ORDINANCE 770 ESTABLISHING LAND USE AND DEVELOPMENT REGULATIONS AND BUSINESS LICENSING REQUIREMENTS FOR ADULT ENTERTAINMENT AND SEXUALLY-ORIENTED BUSINESS USES IN THE CITY OF ILWACO.

WHEREAS, the City Council has previously determined, based on public testimony and other evidence and through findings of fact adopted by the council at previous meetings, that sexually-oriented business uses cause secondary effects that are detrimental to the public health, safety, morals and general welfare of the citizens of the City of Ilwaco; and

WHEREAS, the City Council has considered comments and public testimony received at public hearings, as well as material and information presented by city staff before and at such hearings;

WHEREAS, the citizens of Ilwaco would be well served if the City Council and city staff require licensing to minimize the potential negative secondary effects of such sexually-oriented retail and entertainment uses in the form of health, safety, economic and aesthetic impacts that these businesses could impose upon neighboring properties and on the community as a whole; and

WHEREAS, the city adopted licensing regulations to address sexually-oriented business uses that have as one of its principal purposes to sell, exchange, rent, loan, trade, transfer and/or provide for viewing on or off the premises, any sexually-oriented merchandise, or adult business that provide as a substantial stock in trade, for the sale, exchange, rental, loan, trade, transfer and/or for viewing of use on or off the premises, any sexually-oriented merchandise, or sexually-oriented business uses that provide or promote live entertainment; and

WHEREAS, the adopted licensing regulations require sexually-oriented business uses to apply for a license and include an application fee for adult retail and adult entertainment uses; and

WHEREAS, the adopted licensing regulations require the City Council to establish by resolution a fee to apply for such a license; and

WHEREAS, the adopted licensing regulations require verification of information submitted on the application and a thorough investigation of the proposed physical location of a sexually-oriented business and each employed manager, entertainer, and device; and

WHEREAS, the City of Ilwaco desires to offset the cost to the city involved with verification of information submitted on the application and conducting a thorough investigation of the proposed physical location of a sexually-oriented business and each employed manager, entertainer, and device;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ILWACO,
WASHINGTON, DOES RESOLVE AS FOLLOWS:**

Section 1. Fee Schedule. The City Council of the City of Ilwaco adopts the following fee schedule to implement Ordinance 770 Establishing Land Use and Development Regulations and Business Licensing Requirements for Adult Entertainment and Sexually-Oriented Business Uses in the City of Ilwaco:

ADULT ENTERTAINMENT AND SEXUALLY- ORIENTED BUSINESSES

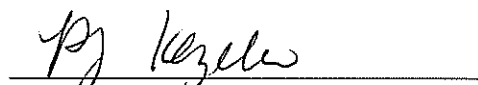
- a. Sexually-Oriented Business License.....\$1,000.00
- b. Adult Entertainment Manager's License.....\$400.00
- c. Adult Entertainer's License.....\$400.00
- d. Adult Arcade Manager's License.....\$400.00
- e. Adult Arcade Device\$50.00/device

Section 2. Effective Date. This resolution, being an exercise of power specifically delegated to the city legislative body, is not subject to referendum and shall take effect five (5) days after passage, approval, and publication of an approved summary of the title of Ordinance 770, as provided by law.

**PASSED BY THE CITY COUNCIL OF THE CITY OF ILWACO, AND SIGNED IN
AUTHENTICATION OF ITS PASSAGE THIS 12TH DAY OF JULY 2010.**


Mike Cassinelli, Mayor

ATTEST:


PJ Kezele, Deputy City Clerk

VOTE	Jensen	Chin	Marshall	Greene	Forner	Cassinelli
Ayes	X	X	X	X	X	
Nays						
Abstentions						
Absent						

EFFECTIVE: 8/2/10